

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2474 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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D.B. BHATT & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR PV HATHI for Petitioners
MR HL JANI for Respondent No. 1
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/01/97

C.A.V. JUDGEMENT

1. The petitioners, employees of the Tourism Corporation of Gujarat Ltd. filed this writ petition before this court and grievance has been made against the seniority list dated 3rd January, 1983, under which they have been given the seniority in the cadre of Accounts Assistant/Sr. Accounts Clerk and Sr. Clerk-cum-Accountant by taking their appointments in the

Corporation to be from 1st June, 1980.

2. The claim of the petitioner is that they may be treated to be an employee of the Corporation for all the purposes with effect from 1-9-1978.

3. The facts of the case are that the petitioners were the employees of the Directorate of Tourism of the Government of Gujarat. The Government of Gujarat decided to develop the tourism on commercial basis and therefore setup a Corporation by forming a public limited company. The said decision has been taken by the Government by its resolution dated 14th March, 1975. By another resolution dated 24th July, 1978, the Government decided the question of transferring the assets from the Directorate of Tourism to the Corporation as also the requisite staff available with the Directorate of Tourism consequent to the latter having been setup with a view to develop, promote and manage tourism in the State. The aforesaid resolution deals with the question of transferring the posts and personnels which were under the Directorate of Tourism. Instead of retrenchment, the Government decided that the incumbents of those posts which were about 125 in number were sent on deputation to the Corporation with effect from 1-9-1978 on usual terms and conditions of deputation except the payment of deputation allowance and it was further decided that the Corporation will watch their work for one year and will thereafter forward to the Government list of persons who were found suitable for absorption in the service of Corporation at the end of that period. The Government kept the question open as to how the staff members who are either not required by the Corporation or who do not opt for the Corporation, at the end of that period. The respondent no.1 under its resolution dated 17th August, 1979 decided the terms and conditions of the staff deputed to the Corporation. The Government under its letter dated 1st September, 1979 forwarded a list of persons who were found suitable for absorption in the Corporation services. The Government thereafter issued a resolution dated 23rd May, 1980 permitting the staff of the Directorate of Tourism shown in the list aforesaid by the Corporation to get absorbed in the Corporation with effect from the date of expiry of deputation on certain conditions. The petitioners names are there in the list aforesaid at Sr. Nos. 1, 2, 5, 7, 17, 20, 22, 25, 37 and 38. The petitioners claim that they stood absorbed as permanent employees of the Corporation on and from 1-9-1978, and are therefore entitled to reckon their service in the Corporation from the said date. So far as the other persons who were on deputation with the Corporation and their names were not

there in the list which has been sent by the Corporation, their period of deputation was extended from time to time. The petitioners have come up with a case that their period of deputation was not extended. During the period from 1-9-1978 till 31-5-1980 as many as 30 new recruits on different posts came to be appointed by the Corporation after open market selection. The petitioners have opted for the Corporation services and they have been absorbed. It is a case of the petitioners that they were always given to understand during the discussions with the Officers that those who had opted for absorption in the Corporation will get all the benefits and that was one of the main considerations for them to get their liens terminated from the State Govt. services and to opt for absorption in the Corporation. The petitioners were called upon to submit their option under the circular dated 18th May, 1979 and there is no dispute that they have opted for Corporation services and they have been absorbed also. Some of the petitioners were given promotions to the next higher post. A tentative seniority list of the employees working in the payscale of Rs.330-560 i.e. Administrative Assistants, Senior Clerks, Assistant Accountants was published by the Corporation under its circular dated 3rd August, 1982 and in the said seniority list, the absorbed staff members, the petitioners were shown senior to those who were recruited after 1-9-1978.

4. The grievance of the petitioners is that with the change of the Managing Director of the Corporation against whose manner of work and behaviour all the employees had recorded their discontentment by submitting a memorandum on 6th September, 1982 to the Chief Secretary and the Chief Minister of the Government, the result of which was that the said officer entertained bias and prejudice towards the absorbed employees who were according to the said officer responsible for the said complaints made to the higher authorities. That officer could persuade the Board of Directors to assign seniority to the absorbed staff members like the petitioners from 1-6-1980. The final seniority list came to be published on 3rd January, 1983 in which the petitioners were shown junior to those who were recruited between 1-9-1978 and 30-5-1980. This list has given cause of filing of this petition to the petitioners before this court. The persons who have been shown senior to the petitioners have been impleaded as party to this petition.

5. The respondent-Corporation has filed a reply to the Special Civil Application and contested the claim of

the petitioners. Amongst the private respondents, the respondent no.3 has filed reply and contested the matter. The petitioners have filed affidavit-in-rejoinder with some documents. The respondents no.4 to 10 have also lastly filed their affidavit together with the documents and the petitioners have filed the affidavit-in-rejoinder.

6. Learned counsel for the petitioners, Shri P.V. Hathi, contended that the petitioners were entitled to reckon their seniority from 1-9-1978 when their services were taken over by the Corporation as the activities which the Government was carrying on was transferred to the Corporation and therefore the seniority list reckoning their seniority from 1-6-1980 is ex-facie illegal and arbitrary. It has next been contended that the services of the petitioners from 1-9-1978 to 30-5-1980 could not have been wiped out on any of the considerations which has been taken into consideration by Corporation while preparing the final seniority list. Lastly, the counsel for the petitioners urged that the Corporation is estopped from taking the petitioners' seniority on the basis of length of services in the Corporation. The counsel for the petitioner contended that the Corporation was not justified in taking the date of 1-6-1980 for the purpose of reckoning their seniority in the Corporation since the said date has no nexus or connection with the service conditions of the petitioners.

7. On the other hand, the counsel for the respondent no.1 contended that the petitioners were absorbed in the Corporation services with effect from 1-9-1979 and the order of absorption has been passed by the Government on 30-5-1980, and as such, their services in the Corporation has rightly been taken for reckoning their seniority from 1-6-1980. Lastly, the counsel for the respondent no.1 contended that the condition of absorption has to be decided by the Corporation and the petitioners were given out that they will be absorbed in Corporation services from 1-9-1979 and they have accepted this condition, and as such, now they are estopped from challenging the said absorption.

8. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The Tourism Corporation of Gujarat Limited was formed in the year 1975. Since the formation of the Corporation, the question of transferring certain assets from the Directorate of Tourism to the Corporation had been under consideration of the Government. On 24th July, 1978, the

Government has resolved to hand over the Tourist Bungalows/Rest Houses, presently managed by the Directorate of Tourism to the Corporation. At the same time, the Government has also considered the question of transferring the requisite staff available with the Directorate of Tourism to the Corporation consequent to the latter having been set up with a view to develop, promote and manage tourism in the State. The orders which have been issued and which are the part of the resolution dated 24th July, 1978 provides that the properties and assets shown in Appendix II will stand transferred to the Tourism Corporation with effect from 1st September, 1978. It has further been provided that the right, title and interest of the Government over these assets will stand transferred to the Corporation from 1-9-1978. However, a rider has been put on the right of the Corporation to dispose of the immovable assets by way of sale except with the prior permission of the State Government. With the transfer of the assets to the Corporation along with the relevant activities pertaining to tourism development, the posts under the Directorate of Tourism, as shown in Appendix-III shall be abolished with effect from 1-9-1978. Similarly the posts indicated in column-3 of Appendix-IV in the Directorate of Tourism were also ordered to be abolished with effect from 1-9-1978. As a consequences of abolition of the aforesaid posts, the officers and the staff of the Department of Tourism would have to face retrenchment in order of juniority to the extent it is not possible for the Government to absorb them on other vacant posts. With a view to avoid that contingency, the Government has resolved that incumbents of those posts (together with their offices, movable and immovable assets) will stand deputed to the Tourism Corporation of Gujarat Limited with effect from 1-9-1978 on usual terms and conditions of deputation that those employees will not be entitled to any deputation allowance. It has further been provided that the Corporation will watch their work for a period of one year and will forward to the Government a list of persons who are found suitable for absorption in the services of the Corporation at the end of that period. Those persons will be given an option of being absorbed by the Corporation on the terms to be decided by the Corporation (emphasis provided). In respect of other staff, that is those not required by the Corporation or those who do not opt for Corporation service, Government reserved its right of consideration for further action as may be required. It is not in dispute that in accordance with the said order the posts on which the petitioners were working are shown in Appendix-III. The petitioner has not filed the appendix, reference of which has been

made in the Government resolution date 24th July, 1978, but there is no dispute that the posts which the petitioners were holding stood abolished from 1-9-1978 and they all were sent on deputation to the Corporation. The Government vide its resolution dated 17-8-1979 sanctioned the deputation of the members of the establishment borne on the Directorate of Tourism who were sent on deputation with effect from 1-9-1978. The relevant terms and conditions on which the deputation were sanctioned by the Government are extracted below:

Term: The term of deputation shall be for a period of one year.

Deputation: The incumbents who stand transferred on deputation to the Tourism Corporation of Gujarat Limited will not be entitled to any deputation allowance during the period of deputation.

Promotion: The Corporation shall not promote them to higher post/grade/pay scale etc. or grant new or increased allowance without the prior consent of the State Government.

Period of deputation: The deputation will commence from 1-9-1978.

Disciplinary action: In the matter of disciplinary action and the departmental enquiry, they will be governed by the orders issued by the State Government from time to time.

9. The Corporation watched the work of the petitioners for a period of one year and they were found suitable for absorption in the services of the Corporation at the end of that period. A list of those class of persons which included the names of the petitioners were sent to the State Government.

10. The Corporation called option from the petitioners for absorption in the Corporation services vide its circular dated 10th May, 1979. The option form was also enclosed to that resolution. This circular clearly provides that those Government servants who were on deputation and interested to be absorbed in the services of the Corporation are required to fill in the form attached to the said circular. The form attached to the circular provides that the petitioners are exercising their option to be absorbed in the services of the Corporation with effect from 1-9-1979. It is not in dispute that, in the aforesaid proforma, the petitioners

had exercised their option for the absorption in the Corporation services. The option form which was enclosed to the circular dated 10th May, 1979 reads as under:

My services are transferred on deputation to the Tourism Corporation of Gujarat Ltd. under Resolution No.TDC/1076/146-A dated 24th July, 1978 of the Home Department, Government of Gujarat and as provided therein, I declare my option as under:-

- (1) I opt to be absorbed on permanent basis in the services of Tourism Corporation of Gujarat Ltd. from 1-9-1979

OR

- (2) I opt to revert back to the State services from that date as I do not intend to continue in services of the Corporation from 1-9-1979.

The Corporation under its circular dated 10th May, 1979 laid down the terms and conditions of the absorption of the employees of the Directorate of Tourism, Government of Gujarat, who were sent on deputation with it. The Corporation was not under an obligation to absorb all the employees. It was not an order of the Government that all its employees will be the employees of the Corporation from the date of deputation. On the other hand, on reading of the Government resolution dated 24th July, 1978, it is clear that the Corporation has given an option to retain in its services only those employees who were found suitable by it. However, one year period has been given to test the suitability of those employees to be absorbed by the Corporation. It was for the Corporation to decide on what terms and conditions, the employees on deputation, who were found to be suitable for Corporation services will be absorbed. Reference may have to the resolution of the Government dated 24th July, 1978. In para no.6 thereof it is made clear that those persons (deputationists who were found suitable by the Corporation for its services) will be given an option of being absorbed by the Corporation on the terms and conditions to be decided by the Corporation. So the terms and conditions of the absorption of the deputationists who were found suitable for the Corporation services by it has to be decided by the Corporation itself. The resolution dated 10th May, 1979 laid down the terms and conditions on which the Corporation decided to absorb the deputationists who were to be absorbed. The deputationists were to be absorbed

from 1-9-1979. That clearly comes out from the circular as well as the enclosed option form.

11. The petitioners have given an option admittedly for their absorption in the Corporation services from 1-9-1979 and that was the terms and condition on which the Corporation has decided to absorb the deputationists. The Corporation has not decided to give any benefit to the petitioners of their services which they rendered to the Corporation on deputation from 1-9-1978. After receipt of the list of deputationists who were found fit for absorption in the Corporation, the Government passed the order on 23rd May, 1980. In this order, reference has been made to para no.6 of the Government resolution, Home Department No.TDC-1076-146-A dated 24th July, 1978. They were ordered to be absorbed with effect from the date of expiry of deputation. The deputation period expired on 31st August, 1979 and the Corporation has decided to absorbed them from 1-9-1979 which the Government has also ordered accordingly. The petitioners accepted their absorption in the Corporation services with clear understanding and open eyes from 1-9-1979. The Corporation has also stated them specifically and in unambiguous term that they are to be absorbed, if they are so willing, from 1st September, 1979. The option declaration which has been given by the petitioners clinches the issue and now they cannot be permitted to resile therefrom and to claim their services in the Corporation from 1-9-1978. Much emphasis has been laid by the counsel for the petitioners on the fact that the petitioners were not paid the deputation allowance for a period of one year, but I fails to see how it helps the petitioners. The petitioners were sent on deputation for trial. On deputation they were only getting the salary from the Corporation, but they were the employees of the Government. They retained their lien in the Government. The resolution of the Government dated 17th August, 1979, under which the terms of deputation had been laid down provides that the deputation shall be for a period of one year. In the aforesaid resolution it has further been provided that the Corporation shall not promote the deputationists to higher post/grade/payscale etc. or grant new or increased allowance without the prior consent of the State Government. In the matter of disciplinary action and the departmental inquiry, the deputationists were to be governed by the orders issued by the State Government from time to time. It has further been laid down under the aforesaid resolution that in respect of matter relating to other conditions of service not specifically provided therein, the deputationists shall be governed by Bombay Civil Services

Rules and other orders issued by the State Government as may be in force from time to time.

12. The counsel for the petitioners by making reference to the resolution dated 24th July, 1978 contended that the posts shown in Appendix-III therein were to be abolished with effect from 1-9-1978, and as such, the petitioners became the employees of the Corporation from the said date. Though at first glance, this argument seems to be attractive, but if we go deeper and read the resolution dated 17th August, 1979 then the shine and charm of this argument does not survive. The terms and conditions of the deputation have been laid down under the resolution dated 17th August, 1979 and the petitioners were sent on deputation for one year. The resolution dated 24th July, 1978 contains the reply to the aforesaid contention made by the learned counsel for the petitioner. The terms and conditions of absorption were to be decided by the Corporation as per clause-6 of the resolution dated 24th July, 1978. If we read the resolution dated 24th July, 1978 in the way in which it is sought to be read by the counsel for the petitioners then other part of this clause will become redundant though that has definite purpose and object. The terms and conditions of absorption were to be decided by the Corporation and if this contention is accepted then what has been given to the Corporation directly will stand withdrawn indirectly. The petitioners continued to be the Government servants for all the purposes other than salary, allowances etc. for the period from 1-9-1978 to 31-8-1979. They ceased to be the Government servant from 1-9-1979 and their lien on Government service stood terminated therefrom. They became the employees of the Corporation from 1-9-1979 and their services in the Corporation could have been counted only from 1-9-1979.

13. However, I do not find any justification in the action of the Corporation to count the services of the petitioners for the purpose of seniority etc. from 1-6-1980. The Government has passed the order for the appointment of petitioners on 23rd May, 1980 and that order might have reached to the Corporation on 1st June, 1980, but the petitioners were ordered to be absorbed from 1-9-1979. The date of order is not relevant, but the date on which the petitioners were ordered to be absorbed is relevant. The Corporation has decided to absorb the petitioners from 1-9-1979. The petitioners have given the option of their absorption from 1-9-1979.

14. Taking into consideration this fact, the counting of seniority of the petitioners from 1-6-1980 is highly

arbitrary and unjustified. The Corporation has failed to give out any justification to take this date for counting of seniority of the petitioners. The services of the petitioners have to be counted for all the purposes from 1-9-1979. The petitioners cannot be permitted to suffer double loss i.e. first loss of period of deputation and further period though the Corporation has accepted them to be absorbed from 1-9-1979.

15. So far as the first prayer is concerned, as discussed earlier, the petitioners themselves had accepted their absorption in the services of Corporation from 1-9-1979 for which the grievance made by them is not sustainable, but the second grievance made by them has merits and deserves acceptance.

16. In the result, this Special Civil Application succeeds in part. It is hereby declared that the petitioners shall be entitled for seniority and all other benefits in the Corporation services with effect from 1-9-1979. The respondent-Corporation is directed to correct their seniority in the list which is impugned in this Special Civil Application by treating them to be in the Corporation services from 1-9-1979. They shall be entitled for all the consequential benefits which follows therefrom. The claim of the petitioners for seniority and other benefits in the Corporation from 1-9-1978 is rejected. Rule is made absolute in the aforesaid terms with no order as to costs.

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